

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 502 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

MAHENDRASINH BALVANTSINH KUMPAVAT

Appearance:

Mr. M.A.Bukhari, ADDL. PUBLIC PROSECUTOR for Petitioner
Mr. Kirit Sheth for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 22/10/97

ORAL JUDGEMENT

Rule. Learned advocate Mr. Kirit Sheth waives service of Rule on behalf of the respondents. At the request of the parties, the matter is taken up for final hearing today.

2. The State of Gujarat has preferred the present Revision Application against the order of the

learned Metropolitan Magistrate, Court no. 19, Ahmedabad passed on 30th August, 1997 by which he rejected the claim of the prosecution to frame a charge against the accused under section 307 of the Indian Penal Code.

3. The respondents-accused are charge-sheeted by the police for the alleged offences punishable under sections 323,324,325,326,147,148 read with section 34 of the Indian Penal Code. The injured persons Sadrubhai Prajapati and Manoj Virendrabhai Prajapati were treated by the Medical Officer of Vadilal Sarabhai General Hospital. The injured person Sadrubhai Prajapati had two injuries, one stab injury over left lower chest 2 cm CLW over left chest in the 8th intercostal space in the anterior axillary line; whereas other injured person Manoj Virendrabhai Prajapati had only one injury of CLW admeasuring 3 cm at post mid scalp region.

4. It is the claim of the prosecution that there was a stab injury on the vital part of the body and in view of the claim made by the original complainant, the accused had attempted to kill the said injured persons and therefore, a charge under section 307 is disclosed and the prosecution should be permitted to amend the charge-sheet to add the said section.

5. The learned Metropolitan Magistrate has considered both the medical certificate and the submissions made on behalf of the prosecution and he has observed that from the medical certificate by giving face value to its contents, it would not be proper to alter the charge and to charge the accused under section 307 of the Indian Penal Code. He has further observed that only after examination of the witnesses including injured persons and the medical officer, if the proper evidence has been brought on record to show prima facie that the claim of the prosecution that there is a disclosure of the offence punishable under section 307 of the Indian Penal Code, then he would alter the charge and amend the charge by following due procedure. By making those observations, he has rejected the application of the prosecution and hence the prosecution has come before this Court in Revision.

6. Admittedly, the accused were not charge-sheeted for the offence punishable under section 307 of the Indian Penal Code. If the order of the learned Magistrate is seen, then it would be quite clear that the learned Metropolitan Magistrate has not come to

any definite conclusion either in favour of the prosecution or against the prosecution or either in favour of the accused. He has considered the contents of the medical certificate and he is of the opinion that unless he records the evidence of the injured persons, as well of the Medical Officer, it would not be possible for him to come to any conclusion as to whether there is a disclosure of the offence punishable under section 307 of the Indian Penal Code. The Magistrate has kept his mind quite open. He has also made it quite clear in his order that after the examination of the injured persons and the Medical Officer, if necessary material is brought on record for framing a charge under section 307, then he would alter the charge and frame the charge against the accused persons under section 307 of the Indian Penal Code. In my opinion, the said order passed by the learned Magistrate could not be said to be either illegal or materially irregular so as to interfere with the said order by exercising revisional jurisdiction. The Metropolitan Magistrate has made it quite clear that he would consider the claim of the prosecution for altering charge only after recording the evidence of the injured persons and the Medical Officer. The said method adopted by the learned Magistrate could not be said to be either improper or illegal. I am unable to hold that the order passed by the learned Magistrate is also perverse so as to exercise revisional jurisdiction to interfere with the same. On the contrary, the order passed by the learned Magistrate is quite just and proper. It would be open for the prosecution to again apply to the learned Magistrate after recording evidence of the injured persons as well of the Medical Officer for framing the charge under section 307 if there happened to be necessary material to support that claim. Thus, at this stage, I do not find any reason to interfere with the order of the learned Magistrate. Rule is discharged.

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